

Berkman H. H. H. H.
Millsap Brooks
D. H. H. H.
Roberts Short
Cary -
Ambrister
By Laney

H. B. No. 1184

A BILL TO BE ENTITLED

AN ACT

relating to the regulation of dietitians; providing a penalty.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. SHORT TITLE. This Act may be cited as the
Licensed Dietitian Act.

SECTION 2. DEFINITIONS. In this Act:

(1) "Board of health" means the Texas Board of Health.

(2) "Department" means the Texas Department of Health.

(3) "Commissioner" means the commissioner of health.

(4) "Board" means the Texas State Board of Examiners of
Dietitians.

(5) "Commission on Dietetic Registration" means the
Commission on Dietetic Registration that is a member of the
National Commission on Health Certifying Agencies.

(6) "Dietetics" means the professional discipline of
applying and integrating scientific principles of nutrition under
different health, social, cultural, physical, psychological, and
economic conditions to the proper nourishment, care, and education
of individuals or groups throughout the life cycle. The term
includes without limitation the development, management, and
provision of nutritional services.

(7) "Licensed dietitian" means a person licensed under this
Act.

(8) "Provisional licensed dietitian" means a person

1 provisionally licensed under this Act.

2 (9) "Degree" means a degree received from a college or
3 university that was regionally accredited at the time the degree
4 was conferred.

5 SECTION 3. BOARD; MEMBERSHIP. (a) The Texas State Board of
6 Examiners of Dietitians is created.

7 (b) The board is composed of nine members. Three members
8 must be members of the general public. Six members must be
9 dietitians licensed under this Act.

10 (c) The governor, with the advice and consent of the Senate,
11 shall appoint the board members, who shall serve staggered terms of
12 six years with two terms beginning February 1 of each odd-numbered
13 year.

14 (d) The professional discipline of dietetics includes five
15 primary areas of expertise: clinical, educational, management,
16 consultation, and community. In making the six professional
17 appointments to the board, the governor shall consider and attempt
18 to accomplish a continuing balance of representation among these
19 areas of expertise.

20 (e) A person is eligible for appointment as a public member
21 if the person and the person's spouse:

22 (1) are not licensed by an occupational regulatory agency in
23 the field of health care;

24 (2) are not employed by and do not participate in the
25 management of an agency or business entity that provides
26 health-care services or that sells, manufactures, or distributes
27 health-care supplies or equipment; and

1 (3) do not own, control, or have a direct or indirect
2 interest in more than 10 percent of a business entity that provides
3 health-care services or that sells, manufactures, or distributes
4 health-care supplies or equipment.

5 (f) An appointment to the board shall be made without regard
6 to the race, creed, sex, religion, or national origin of the
7 appointee.

8 (g) A member or employee of the board may not be an officer,
9 employee, or paid consultant of a trade association in the field of
10 health care. A member or employee of the board may not be related
11 within the second degree of affinity or consanguinity to a person
12 who is an officer, employee, or paid consultant of a trade
13 association in the dietetic industry.

14 (h) A person who is required to register as a lobbyist under
15 Chapter 422, Acts of the 63rd Legislature, Regular Session, 1973
16 (Article 6252-9c, Vernon's Texas Civil Statutes), in a health
17 related area may not serve as a member of the board or act as the
18 general counsel to the board.

19 SECTION 4. GROUNDS FOR REMOVAL. (a) It is a ground for
20 removal from the board if a member:

21 (1) does not have at the time of appointment the
22 qualifications required for appointment to the board;

23 (2) does not maintain during service on the board the
24 qualifications required for appointment to the board; or

25 (3) violates a prohibition established by this Act.

26 (b) If a ground for removal of a member from the board
27 exists, the board's actions taken during the existence of the

1 ground for removal are valid.

2 SECTION 5. OFFICERS; MEETINGS; QUORUM; EXPENSES. (a) Not
3 later than the 30th day after the day its new members are appointed
4 by the governor, the board shall meet to elect a chairman and
5 vice-chairman who shall hold office according to rules adopted by
6 the board.

7 (b) The board shall hold at least two regular meetings each
8 year as provided by rules adopted by the board. The rules may not
9 be inconsistent with present rules of the department relating to
10 meetings of boards.

11 (c) A majority of the members constitutes a quorum.

12 (d) Each member of the board is entitled to a per diem
13 payment at the rate set by the legislature for state employees in
14 the General Appropriations Act for each day that the member engages
15 in the business of the board. A member is entitled to compensation
16 for transportation expenses as provided by the General
17 Appropriations Act. A board member may not receive a fixed salary
18 for his services.

19 SECTION 6. POWERS AND DUTIES OF BOARD. (a) The board may
20 adopt rules consistent with this Act. In adopting rules, the board
21 shall consider the rules and procedures of the board of health and
22 the department and shall adopt procedural rules not inconsistent
23 with similar existing rules and procedures of the board of health
24 or the department.

25 (b) The board shall:

26 (1) adopt and publish a code of ethics and adopt an official
27 seal;

1 (2) establish the qualifications and fitness of applicants
2 for licenses, renewal of licenses, and reciprocal licenses;

3 (3) revoke, suspend, or deny a license, probate a license
4 suspension, or reprimand a licensee for a violation of this Act,
5 the code of ethics, or the rules of the board;

6 (4) spend funds necessary for the proper administration of
7 its assigned duties;

8 (5) establish reasonable and necessary fees for the
9 administration and implementation of this Act; and

10 (6) comply with the open meetings law, Chapter 271, Acts of
11 the 60th Legislature, Regular Session, 1967 (Article 6252-17,
12 Vernon's Texas Civil Statutes), and the Administrative Procedure
13 and Texas Register Act (Article 6252-13a, Vernon's Texas Civil
14 Statutes).

15 (c) The board may not adopt rules restricting competitive
16 bidding or advertising by a person regulated by the board except to
17 prohibit false, misleading, or deceptive practices. The board may
18 not include in its rules to prohibit false, misleading, or
19 deceptive practices by a person regulated by the board a rule that:

20 (1) restricts the person's use of any medium for
21 advertising;

22 (2) restricts the person's personal appearance or use of his
23 personal voice in an advertisement;

24 (3) relates to the size or duration of any advertisement by
25 the person; or

26 (4) restricts the person's advertisement under a trade name.

27 SECTION 7. ADMINISTRATIVE FUNCTIONS; PERSONNEL. (a) The

1 basic personnel and necessary facilities that are required to
2 administer this Act shall be the personnel and facilities of the
3 department. The department personnel shall act as the agents of
4 the board. If necessary to the administration or implementation of
5 this Act, the department, by agreement, may secure, and provide for
6 compensation for, services that it considers necessary and may
7 employ and compensate, within available appropriations,
8 professional consultants, technical assistants, and employees on a
9 full-time or part-time basis.

10 (b) The commissioner shall designate an employee to serve as
11 executive secretary of the board. The executive secretary must be
12 an employee of the department. The executive secretary shall be
13 the administrator of the licensing activities for the board. In
14 addition to other duties prescribed by this Act and by the
15 department, the executive secretary shall:

16 (1) keep full and accurate minutes of the transactions and
17 proceedings of the board;

18 (2) be the custodian of the files and records of the board;

19 (3) prepare and recommend to the board plans and procedures
20 necessary to implement the purposes and objectives of this Act,
21 including rules and proposals on administrative procedures
22 consistent with this Act;

23 (4) exercise general supervision over persons employed by
24 the department in the administration of this Act;

25 (5) be responsible for the investigation of complaints and
26 for the presentation of formal complaints;

27 (6) attend all meetings of the board as a nonvoting

1 participant; and

2 (7) handle the correspondence of the board, make or arrange
3 for necessary inspections and investigations, and obtain, assemble,
4 or prepare the reports and information that the board may direct or
5 authorize.

6 SECTION 8. FEES; FUNDS; ANNUAL REPORT; AUDIT. (a) After
7 consultation with the commissioner or the department, the board
8 shall set the fees imposed by this Act in amounts that are adequate
9 to collect sufficient revenue to meet the expenses necessary to
10 administer this Act without accumulating an unnecessary surplus in
11 the Licensed Dietitian Act fund created by this section.

12 (b) The department shall receive and account for funds
13 derived under this Act. The funds shall be deposited in the state
14 treasury to the credit of a special fund to be known as the
15 Licensed Dietitian Act fund to be used only for the administration
16 of this Act.

17 (c) Not later than January 1 each year, the department shall
18 make a written report to the governor, lieutenant governor, and
19 speaker of the house of representatives accounting for all funds
20 received and disbursed by the board or the department for the
21 administration of this Act during the preceding year.

22 (d) During each fiscal year, the state auditor shall audit
23 the financial transactions of the board or the department in
24 relation to the administration of this Act.

25 SECTION 9. APPLICANT QUALIFICATIONS; APPLICATION REVIEW.

26 (a) An applicant for a dietitian license must submit a sworn
27 application, accompanied by the application fee.

1 (b) The board shall prescribe the form of the application
2 and may by rule establish dates by which applications and fees must
3 be received. These rules must not be inconsistent with present
4 rules of the department related to application dates of other
5 licenses.

6 (c) To qualify for the licensing examination under this Act,
7 the applicant must:

8 (1) possess a baccalaureate or postbaccalaureate degree with
9 a major course of study in human nutrition, food and nutrition,
10 dietetics, or food systems management, or an equivalent major
11 course of study approved by the board; and

12 (2) have completed an internship or preplanned professional
13 experience program approved by the board.

14 (d) Not later than the 45th day after the receipt of a
15 properly submitted and timely application, and not later than the
16 30th day before the next examination date, the department shall
17 notify an applicant in writing that his application and any other
18 relevant evidence pertaining to applicant qualifications
19 established by the board by rule has been received and
20 investigated. The notice shall state whether the application and
21 other evidence submitted have qualified the applicant for
22 examination. If the applicant has not qualified for examination,
23 the notice shall state the reasons for the lack of qualification.

24 SECTION 10. EXAMINATION. (a) To qualify for a license
25 under this Act, an applicant must pass a competency examination.
26 Examinations shall be prepared or approved by the board and
27 administered to qualified applicants at least twice each calendar

1 year.

2 (b) An examination prescribed by the board may be or may
3 include an examination given by the Commission on Dietetic
4 Registration or by a national or state testing service.

5 (c) Not later than the 30th day after the day on which a
6 licensing examination is administered under this Act, the
7 department shall notify each examinee of the results of the
8 examination. If an examination is graded or reviewed by a national
9 or state testing service, the department shall notify examinees of
10 the results of the examination within two weeks after the day the
11 department receives the results from the testing service. If the
12 notice of the examination results will be delayed for more than 90
13 days after the examination date, the department shall notify the
14 examinee of the reason for the delay before the 90th day.

15 (d) If requested in writing by a person who fails the
16 licensing examination, the department shall furnish the person with
17 an analysis of the person's performance on the examination.

18 (e) If an applicant fails the examination three times, the
19 applicant must furnish evidence to the board of completed course
20 work taken for credit with a passing grade in the areas of weakness
21 before the applicant may again apply for examination.

22 SECTION 11. LICENSE. (a) A person who meets the licensing
23 qualifications under this Act is entitled to receive a license
24 certificate as a licensed dietitian.

25 (b) The licensee must:

26 (1) display the license certificate in an appropriate and
27 public manner; and

1 (2) keep the department informed of his current address.

2 (c) A license certificate issued by the board is the
3 property of the board and must be surrendered on demand.

4 SECTION 12. LICENSE EXPIRATION; RENEWAL. (a) A license is
5 valid for one year from the date it is issued and may be renewed
6 annually.

7 (b) The board of health by rule may adopt a system under
8 which licenses expire on various dates during the year.

9 (c) A person may renew an unexpired license by paying the
10 required renewal fee to the department before the expiration date
11 of the license.

12 (d) If a person's license has been expired for not more than
13 90 days, the person may renew the license by paying to the
14 department the required renewal fee and a penalty fee that is
15 one-half of the renewal fee.

16 (e) If a person's license has been expired for more than 90
17 days but less than two years, the person may renew the license by
18 paying to the department all unpaid renewal fees and a penalty fee
19 that is equal to the renewal fee.

20 (f) If a person's license has been expired two years or
21 more, the person may not renew the license. The person may obtain
22 a new license by submitting to reexamination and complying with the
23 current requirements and procedures for obtaining a license.

24 (g) The department shall notify each licensee in writing of
25 the license expiration date at least 30 days before that date and
26 shall obtain from the licensee a signed receipt confirming receipt
27 of notification.

1 SECTION 13. PROVISIONAL LICENSE. (a) A license to use the
2 title of provisional licensed dietitian may be issued by the board
3 on the filing of an application, payment of an application fee, and
4 the submission of evidence of the successful completion of the
5 educational requirement under Section 9 of this Act. The initial
6 application shall be signed by the supervising licensed dietitian.

7 (b) A provisional licensed dietitian shall be under the
8 supervision and direction of a licensed dietitian.

9 (c) A person qualified for a provisional license under this
10 Act is entitled to receive a license certificate as a provisional
11 licensed dietitian. A provisional licensed dietitian must comply
12 with Sections 11(b) and (c) of this Act.

13 (d) A provisional license is valid for one year from the
14 date it is issued and may be renewed annually by the same
15 procedures established for renewal under Section 12 of this Act if
16 the application for renewal is signed by the supervising licensed
17 dietitian.

18 SECTION 14. RECIPROCITY. On receipt of an application and
19 application fee, the board shall waive the examination requirement
20 for an applicant who, at the time of application:

21 (1) is registered by the Commission on Dietetic Registration
22 as a registered dietitian; or

23 (2) holds a valid license or certificate as a licensed or
24 registered dietitian issued by another state with which this state
25 has a reciprocity agreement.

26 SECTION 15. PROHIBITED ACTS; PENALTY. (a) A person may not
27 use the title or represent or imply that he has the title of

1 "licensed dietitian" or "provisional licensed dietitian," or use
2 the letters "LD" or "PLD," and may not use any facsimile of those
3 titles in any manner to indicate or imply that the person is a
4 licensed dietitian or provisional licensed dietitian, unless the
5 person holds an appropriate license issued under this Act.

6 (b) A person may not use the title or represent or imply
7 that he has the title of "registered dietitian" or the letters
8 "RD," and may not use any facsimile of the title in any manner to
9 indicate or imply that the person is registered as a registered
10 dietitian by the Commission on Dietetic Registration, unless the
11 person is registered as a registered dietitian by the Commission on
12 Dietetic Registration.

13 (c) A person commits an offense if the person knowingly or
14 intentionally violates Subsection (a) or (b) of this section. An
15 offense under this section is a Class B misdemeanor.

16 SECTION 16. COMPLAINT FILE AND STATUS. (a) The department
17 shall keep an information file about each complaint filed with the
18 board related to a licensee.

19 (b) If a written complaint is filed with the board relating
20 to a licensee, the department, at least as frequently as quarterly,
21 shall notify the parties to the complaint of the status of the
22 complaint until final disposition of the complaint.

23 SECTION 17. REVOCATION AND SUSPENSION; EX PARTE
24 COMMUNICATION. (a) The board shall revoke or suspend a license,
25 probate a license suspension, or reprimand a licensee on proof of:

26 (1) any violation of this Act; or

27 (2) any violation of a rule or code of ethics adopted by the

1 board.

2 (b) If the board proposes to suspend or revoke a person's
3 license, the person is entitled to a hearing before the board.

4 (c) Proceedings for the suspension or revocation of a
5 license are governed by the Administrative Procedure and Texas
6 Register Act (Article 6252-13a, Vernon's Texas Civil Statutes).

7 (d) A member or employee of the board or an employee of the
8 department who carries out the functions of the board may not
9 communicate directly or indirectly with a party to a proceeding
10 pending before the board, or with the party's representative,
11 unless notice and an opportunity to participate are given to each
12 party to the proceeding if the member or employee proposes to make
13 a decision, a finding of fact, or a conclusion of law in the
14 proceeding.

15 SECTION 18. DUTIES OF BOARD OF HEALTH. For the purpose of
16 implementing this Act, the board of health:

17 (1) shall request and receive any necessary assistance of
18 state educational institutions or other state agencies;

19 (2) shall prepare information of consumer interest
20 describing the regulatory functions of the board, the procedures by
21 which consumer complaints are filed and resolved, and the
22 profession of dietetics;

23 (3) shall prepare a registry of licensed dietitians and
24 provisional licensed dietitians and make this information available
25 to the general public, licensees, and appropriate state agencies;
26 and

27 (4) may request the attorney general or the appropriate

1 county or district attorney to institute a suit to enjoin a
2 violation of this Act in addition to any other action, proceeding,
3 or remedy authorized by law.

4 SECTION 19. APPLICATION OF SUNSET ACT. The board is subject
5 to the Texas Sunset Act (Article 5429k, Vernon's Texas Civil
6 Statutes). Unless continued in existence as provided by that Act,
7 the board is abolished effective September 1, 1991.

8 SECTION 20. INITIAL BOARD APPOINTMENTS. (a) In making the
9 initial appointments to the board, the governor shall designate
10 three members, including one public member, for terms expiring
11 February 1, 1989, three members, including one public member, for
12 terms expiring February 1, 1987, and three members, including one
13 public member, for terms expiring February 1, 1985.

14 (b) Following the fourth anniversary date of the effective
15 date of this Act, a licensee eligible for appointment as a
16 professional board member must have been a licensed dietitian under
17 this Act for at least three years before his appointment to the
18 board. In making the initial six professional appointments to the
19 board, the governor shall appoint six persons otherwise qualified
20 under this Act who also have been for 60 months immediately
21 preceding their appointment, and who presently are, registered as
22 registered dietitians by the Commission on Dietetic Registration.

23 SECTION 21. INITIAL LICENSING PERIOD. For one year
24 beginning on the effective date of this Act, the board shall waive
25 the examination requirement under this Act and grant a license
26 under this Act to any person who:

27 (1) is registered by the Commission on Dietetic Registration

1 as a registered dietitian on the effective date of this Act or who
2 becomes so registered before the one year anniversary of the
3 effective date of this Act; or

4 (2) possesses a baccalaureate or postbaccalaureate degree,
5 has satisfactorily completed appropriate academic requirements in
6 the field of human nutrition, food and nutrition, dietetics, or
7 food systems management or a directly related field approved by the
8 board, and either has satisfactorily completed an internship or
9 preplanned professional experience program of not less than six
10 months approved by the board, or has been employed in the field of
11 dietetics for three of the 10 years immediately preceding the
12 effective date of this Act.

13 SECTION 22. EFFECTIVE DATE. This Act takes effect September
14 1, 1983.

15 SECTION 23. EMERGENCY. The importance of this legislation
16 and the crowded condition of the calendars in both houses create an
17 emergency and an imperative public necessity that the
18 constitutional rule requiring bills to be read on three several
19 days in each house be suspended, and this rule is hereby suspended.

B. No. 1184

By Larney

A BILL TO BE ENTITLED
AN ACT

relating to the regulation of dietitians; providing a penalty.

MAR 2 1983

1. Filed with the Chief Clerk.

MAR 15 1983

2. Read first time and Referred to Committee on

State Affairs

3. Reported ___ favorably (as amended) and sent to Printer at ___
(as substituted)

4. Printed and distributed at ___

5. Sent to Committee on Calendars at ___

6. Read second time (amended); passed to third reading (failed) by (Non-Record Vote)
(Record Vote of ___ yeas, ___ nays, ___
present, not voting).

7. Motion to reconsider and table the vote by which H.B. ___ was ordered
engrossed prevailed (failed) by a (Non-Record Vote) (Record Vote of ___ yeas,
___ nays, and ___ present, not voting).

8. Constitutional Rule requiring bills to be read on three several days suspended (failed
to suspend) by a four-fifths vote of ___ yeas, ___ nays, and ___
present, not voting.

9. Read third time (amended); finally passed (failed) by (Non-Record Vote) (Record Vote
of ___ yeas, ___ nays, ___ present, not voting).

10. Caption ordered amended to conform to body of bill.

11. Motion to reconsider and table the vote by which H. B. ___ was finally passed
prevailed (failed) by a (Non-Record Vote) (Record Vote of ___ yeas, ___
nays, and ___ present, not voting).

12. Ordered Engrossed at ___

13. Engrossed.

14. Returned to Chief Clerk at ___

15. Sent to Senate.

Chief Clerk of the House

16. Received from the House

17. Read, referred to Committee on ___

18. Reported favorably

19. Reported adversely, with favorable Committee Substitute; Committee Substitute read
first time.

20. Ordered not printed.

21. Regular order of business suspended by

(a viva voce vote.)

(___ yeas, ___ nays.)

_____ 22. To permit consideration, reading and passage, Senate and Constitutional Rules suspended by vote of _____ yeas, _____ nays.

_____ 23. Read second time _____ passed to third reading by:
(a viva voce vote.)
(_____ yeas, _____ nays.)

_____ 24. Caption ordered amended to conform to body of bill.

_____ 25. Senate and Constitutional 3-Day Rules suspended by vote of _____ yeas,
_____ nays to place bill on third reading and final passage.

_____ 26. Read third time and passed by
(a viva voce vote.)
(_____ yeas, _____ nays.)

OTHER ACTION:

OTHER ACTION:

Secretary of the Senate

_____ 27. Returned to the House.

_____ 28. Received from the Senate (with amendments.)
(as substituted.)

_____ 29. House (Concurred) (Refused to Concur) in Senate (Amendments) by a (Non-Record
(Substitute) Vote) (Record Vote of _____ yeas, _____ nays, _____ present, not voting).

_____ 30. Conference Committee Ordered.

_____ 31. Conference Committee Report Adopted (Rejected) by a (Non-Record Vote) (Record
Vote of _____ yeas, _____ nays, and _____ present, not voting).

_____ 32. Ordered Enrolled at _____